

Application No.: 10/043518

Docket No.: 62495-00003USPT

REMARKS

Reconsideration of the present application as amended is respectfully requested. Claims 21, 25, 29, 35, 39, 40, and 42 have been amended in response to several interviews with the Examiner. Applicant wishes to thank the Examiner for the courtesy extended in the granting of the interviews with Applicant. New claims 43-46 have been added. Claim 41 has been canceled. Applicant respectfully submits that the amendments made to the claims have not narrowed the scope of the claims nor added new matter, and that no additional search is necessary for their consideration. Claims 20-21, 23-25, 27-35, 37-40, and 42-46 are currently pending.

Claims 33-34, 41, and 42 stand objected to as being dependent upon a rejected base claim, but have been indicated as allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 20 has been allowed. Applicant wishes to thank the Examiner for the indication of allowable subject matter.

New independent claim 43 has been added to include the indicated allowable subject matter of claims 29 and 33. New dependent claims 44-46 have been added to correspond to the subject matter of claims 30-32, and 34. Applicant respectfully submits that new claims 43-46 are allowable over the art of record.

Claims 21, 23-24, 25, 27-28, 29-32, and 39-40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,981,095 to Shepherd ("Shepherd") and further in view of U.S. Patent No. 3,789,534 to Yankaitis ("Yankaitis").

The Office Action indicates in the Response to Arguments on page 4 that "in regard to claims 29 and 41, claim 29 states that the eccentric member is mounted to the shaft at a position within the hollow cavity." The Office Action further indicates that "the claim does not require that the eccentric member is wholly contained within the hollow cavity and thus may be inside and outside the cavity" (emphasis added). The Office Action further indicates that claim 41, indicated by the Examiner to contain allowable subject matter, requires "that the eccentric member be positioned within the hollow cavity" (emphasis added).

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Independent claim 21 has been amended to include the feature of "an eccentric member mounted to, and rotated by, the shaft to effectuate the vibration which is initiated within the handle portion, the eccentric member positioned within the hollow interior space of the handle portion." Independent claim 25 has been amended to include the feature of "an eccentric member mounted to, and rotated by, the shaft to effectuate the vibration within the handle, the eccentric member positioned within the hollow interior space of the handle." The phrase "positioned within" is taken from objected to claim 41 and is defined by Applicant in the same way asserted by the Examiner to mean "wholly contained within." Applicant respectfully submits that the electric motor 16, batteries 18 and 20, line 22, and lure 30 of Shepherd do not comprise a vibrating assembly mounted within a hollow interior space of a handle portion, in which the vibrating assembly includes an eccentric member positioned within the hollow interior space of the handle portion. In the apparatus of Shepherd the electric motor 16 causes a rotation of the line 22, which in turn causes motion of the attached lure 30. Neither the line 22 nor lure 30 (which meets the "eccentric member" limitation) are positioned within (i.e., wholly contained within) the hollow interior space of the handle portion as claimed.

The Office Action alleges that Shepherd discloses a vibrating assembly which includes an electric motor 16, batteries 18 and 20, and a line 22 mounted within a handle assembly which when activated causes vibration to be initiated within the handle portion. In the Response to Arguments portion of the Office Action (See page 4), it is alleged that "vibration is periodic motion and the line of Shepherd moves in a circle at the end, which is periodic motion" and that "rotation of the line is the start of the vibration, which starts in the motor." It is further alleged that "Shepherd has a rotating shaft as disclosed in column 1, line 51 and the lure 30 is an eccentric member mounted to and rotated by the shaft." Applicant respectfully submits that there is no teaching or suggestion in Shepherd that any vibration is initiated within the handle portion by an eccentric "positioned within the hollow interior space" as claimed. Rather, Applicant respectfully submits that any vibration that may be transferred to the fishing rod of Shepherd would be initiated by the movement of the lure 30 (the eccentric, which is not "positioned within" the handle) and transferred by the line 22 to the fishing rod. In Shepherd vibration is not initiated within the handle portion by the eccentric (lure). Rather, it is initiated external to the handle through movement of the lure.

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Applicant further respectfully submits that the electric motor 16 of Shepherd does not by itself form a vibrating assembly. Applicant submits that there is no teaching or suggestion by Shepherd that the electric motor 16 should be constructed in such a manner that it purposely vibrates or initiates vibration when operated. Applicant submits that even if the electric motor 16 of Shepherd were to possess an inherent vibration due to inexactness in construction, such a vibration would not be of a sufficient magnitude to produce the desired result of the present application, namely that of vibrating the fishing pole with a sufficient magnitude so as to transfer the vibration to an attached fishing line and fishing lure with the intent of attracting fish (See, for example, page 3, lines 9-14 and page 10, lines 5-8 of the specification as originally filed). Further, Applicant respectfully submits as evidence that the electric motor 16 of Shepherd does not possess such an inherent vibration of sufficient magnitude to produce the desired result of the present application, that Shepherd includes an apparatus that functions to impart a rotation to the lure 30, which the Examiner suggests is functioning as an external eccentric and vibratory source.

The Office Action acknowledges that Shepherd fails to show an eccentric mounted to a motor. The Office Action refers to Figure 2 of Yankaitis as describing an eccentric mounted to a motor. In particular, the Office Action refers to the fly wheel 44, eccentric 46, and one end 49 of a reciprocating arm 48 as describing an eccentric. Applicant respectfully submits that Yankaitis also fails to teach or suggest the features of independent claim 21. Yankaitis describes a DC motor mounted to a fishing rod for selectively driving a reciprocating arm. The DC motor and a battery are contained in a housing that is clamped to the fishing rod. The reciprocating arm passes through a pivotally mounted connecting block that allows the arm to reciprocate therethrough, the reciprocating arm being positioned external to the housing and terminating in an eye circumjacent to a fishing line. Movement of the reciprocating arm by the motor results in movement of the eye such that each rotation of the motor creates two pulls on the fishing line. Applicant respectfully submits that Yankaitis also fails to teach or suggest a vibrating assembly mounted within a hollow interior space of a handle portion, in which the vibrating assembly includes an eccentric member positioned within (i.e., wholly contained within) the hollow interior space of the handle portion. Neither the reciprocating arm 48 (which the Examiner suggests meets the claimed eccentric) nor the eye 50 are positioned within the housing 22 of Yankaitis.

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Applicant further respectfully submits that the DC electric motor 32 and fly wheel 44 of Yankaitis do not by themselves form a vibrating assembly. As described in column 2, lines 32-47 of Yankaitis, the fly wheel 44 has a counterweight 45 which functions to balance the weight of the eccentric 46, thus eliminating vibration which may be caused by the rotational movement of the eccentric 46. Applicant submits that there is no teaching or suggestion by Yankaitis that the DC electric motor 32 and fly wheel 44 should be constructed in such a manner that the assembly vibrates when operated. Rather, vibration results from the oscillation of the reciprocating arm, and not from any motor rotation. Applicant submits that if such an assembly were to possess an inherent vibration due to inexactness in construction, such a vibration would not be of a sufficient magnitude to produce the desired result of the present application (See, for example, page 3, lines 9-14 and page 10, lines 5-8 of the specification as originally filed). Further Applicant respectfully submits as evidence that the DC electric motor 32 and fly wheel 44 of Yankaitis does not possess such an inherent vibration of sufficient magnitude to produce the desired result of the present application, that Yankaitis includes the reciprocating arm 48 and the eye 50, which the Examiner suggests is functioning as an external eccentric, to vibrate a fishing line. For at least the foregoing reasons, Applicant respectfully submits that independent claims 21 and 25 distinguish over Shepherd in view of Yankaitis and requests the 35 U.S.C. 103(a) rejection of independent claims 21 and 25 be withdrawn.

Independent claim 29 has been amended to include the feature of a vibrating assembly including "an eccentric member mounted to the shaft and positioned within the axially extending hollow cavity of the rod portion, the eccentric member being rotated by the shaft to cause vibration to be initiated within the rod portion.". The Office Action indicates in the Response to Arguments on page 4 that "in regard to claims 29 and 41, claim 29 states that the eccentric member is mounted to the shaft at a position within the hollow cavity." The Office Action further indicates that "the claim does not require that the eccentric member is wholly contained within the hollow cavity and thus may be inside and outside the cavity" (emphasis added). The Office Action further indicates that claim 41, indicated by the Examiner to contain allowable subject matter, requires "that the eccentric member be positioned within the hollow cavity" (emphasis added). Applicant has amended independent claim 29 to include the feature (identified by the Examiner from objected to claim 41) that the eccentric member is positioned within the axially extending hollow cavity of the rod portion. Applicant respectfully submits

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that neither Shepherd nor Yankaitis, alone or in combination, teach or suggest such a feature. Applicant respectfully submits that independent claim 29 distinguishes over Shepherd in view of Yankaitis and requests the 35 U.S.C. 103(a) rejection of independent claim 29 be withdrawn.

Independent claim 39 has been amended to include the indicated allowable subject matter of claim 41 of "wherein the eccentric member is positioned within the longitudinally extending channel of the rod portion to cause vibration which initiates within the rod portion." Applicant respectfully submits that independent claim 39 distinguishes over Shepherd in view of Yankaitis and requests the 35 U.S.C. 103(a) rejection of independent claim 39 be withdrawn.

Claim 40 has been amended to include the features of independent claim 39 to form a new independent claim. For similar reasons as those discussed with respect to independent claims 21 and 25, Applicant respectfully submits that Shepherd in view of Yankaitis fails to teach or suggest at least the feature of claim 40 of "wherein the eccentric member is positioned within the interior space of the handle portion to cause vibration which initiates within the handle portion." Applicant respectfully submits that independent claim 40 distinguishes over Shepherd in view of Yankaitis because these references clearly teach external eccentrics which are not positioned within (i.e., wholly contained within) interior spaces, and requests the 35 U.S.C. 103(a) rejection of claim 40 be withdrawn.

Claims 23-24, 27-28, and 30-32 are dependent upon and include the features of their respective independent claims 21, 25, and 29. For at least the reasons as discussed with respect to independent claims 21, 25, and 29, Applicant respectfully submits that claims 23-24, 27-28, and 30-32 distinguish over Shepherd in view of Yankaitis and requests the 35 U.S.C. 103(a) rejection of claims 23-24, 27-28, and 30-32 be withdrawn.

Claims 35 and 38 stand rejected under 35 U.S.C. 102(b) as being anticipated by Yankaitis. Independent claim 35 has been amended to include the feature of a vibrating assembly including "an eccentric member mounted to, and rotated by, the shaft to effectuate the vibration initiated within the housing, the eccentric member positioned within the hollow interior space of the housing" The Office Action indicates that "Yankaitis shows a fishing rod with a vibrating assembly which comprises a housing 20, a vibrating assembly 32, 34, and 48 mounted within the interior of the housing." Applicant respectfully submits that Yankaitis fails to teach

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or suggest an eccentric member positioned within a hollow interior space of a housing. Neither the reciprocating arm 48 nor the eye 50 are positioned within the housing 22 of Yankaitis.

The Office Action alleges that "Yankaitis shows mounting means 24, for attaching the housing to a fishing pole at a selected location for transferring the initiated vibration to the fishing pole since inherently, some of the rotational energy will be transferred directly to the pole." As similarly discussed in regard to independent claim 21, Applicant further respectfully submits that the DC electric motor 32, the battery 34, the fly wheel 44, and the eccentric 46 of Yankaitis do not by themselves form a vibrating assembly. As described in column 2, lines 32-47 of Yankaitis, the fly wheel 44 has a counterweight 45 which functions to balance the weight of the eccentric 46, thus eliminating vibration which may be caused by the rotational movement of the eccentric 46. Applicant submits that there is no teaching or suggestion by Yankaitis that the DC electric motor 32 and fly wheel 44 should be constructed in such a manner that the assembly vibrates when operated. Applicant submits that if such an assembly were to possess an inherent vibration due to inexactness in construction, such a vibration would not be of a sufficient magnitude to produce the desired result of the present application. Further Applicant respectfully submits as evidence that the DC electric motor 32 and fly wheel 44 of Yankaitis does not possess such an inherent vibration of sufficient magnitude to produce the desired result of the present application, that Yankaitis includes the reciprocating arm 48 and the eye 50, which the Examiner suggests is functioning as an external eccentric, to vibrate a fishing line. Further the mounting assembly in Yankaitis does not function to transfer any vibration to the lure, as that function is accomplished by the reciprocating arm. For at least the foregoing reasons, Applicant respectfully submits that independent claim 35 distinguishes over Yankaitis and requests the 35 U.S.C. 102(b) rejection of independent claim 35 be withdrawn.

Claim 38 is dependent upon and include the features of independent claim 35. For at least the reasons as discussed with respect to independent claim 35, Applicant respectfully submits that claim 38 distinguishes over Yankaitis and requests the 35 U.S.C. 102(b) rejection of claim 38 be withdrawn.

Claim 37 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Yankaitis. Claim 37 is dependent upon and include the features of independent claim 35. For at

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least the reasons as discussed with respect to independent claim 35, Applicant respectfully submits that claim 37 distinguishes over Yankaitis and requests the 35 U.S.C. 103(a) rejection of claim 37 be withdrawn.

In view of the above, each of the presently-pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

By Michael W. Maddox  
Michael W. Maddox  
Registration No.: 47,764  
JENKENS & GILCHRIST, A PROFESSIONAL  
CORPORATION  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202  
(214) 855-4500  
(214) 855-4300 (Fax)